

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

TUNIA AGUILAR,

Petitioner,

vs.

Case No. 25-0334

WHISPER LAKES UNIT 2
HOMEOWNERS ASSOCIATION, INC.,

Respondent.

_____ /

RECOMMENDED ORDER

On March 27, 2025, Administrative Law Judge Joshua E. Pratt of the Division of Administrative Hearings (“DOAH”) held a final hearing in this case via Zoom.

APPEARANCES

For Petitioner: Tunia Aguilar, pro se
11894 Atlin Drive
Orlando, Florida 32837

For Respondent: Stephen “Toby” Tobias Snively, Esquire
Law Offices of John L. Di Masi, P.A.
801 North Orange Avenue, Suite 500
Orlando, Florida 32801

STATEMENT OF THE ISSUES

The issues in this case are two-fold: (1) whether the Initial Petition filed by Petitioner is untimely and, if so, whether she waived her right to request an administrative hearing; and (2) whether the Proposed Revived Declaration of Covenants and Restrictions for Respondent complies with the requirements for revitalization of sections 720.403 to 720.407, Florida

Statutes, and is therefore entitled to approval by the Department of Commerce.

PRELIMINARY STATEMENT

On October 11, 2024, the Department of Commerce issued a two-page Approval Letter (“Approval Letter”) approving the Proposed Revived Declaration of Covenants and Restrictions for the Whisper Lakes Unit 2 Homeowners Association, Inc. (“Proposed Revived Declaration”). The second page of the letter contains a “Notice of Administrative Rights.”

On December 23, 2024, Petitioner Tunia Aguilar (“Ms. Aguilar”) elected to pursue her right to an administrative hearing by filing an Initial Petition Challenging Agency Action and For Administrative Proceedings (“Initial Petition”) with the Department of Commerce against Respondent Whisper Lakes Unit 2 Homeowners Association, Inc. (“Whisper Lakes HOA”). On January 6, 2025, Ms. Aguilar filed an Amended Petition Challenging Agency Action and For Administrative Proceedings (“Amended Petition”) with the Department of Commerce against Whisper Lakes HOA.

On January 21, 2025, the Department of Commerce referred the Amended Petition to DOAH.

The case was assigned to the undersigned, who scheduled the case for a one-day final hearing to be held via Zoom on March 27, 2025.

On March 19, 2025, the parties filed their Pre-Hearing Stipulation. The Pre-Hearing Stipulation contains a concise statement of those facts to which the parties have stipulated. The stipulated facts are incorporated in the Findings of Fact below.

The final hearing was convened as scheduled on March 27, 2025. Ms. Aguilar testified on her own behalf and presented two other witnesses: Rozell McKay and Stephen Snively.¹ Whisper Lakes HOA presented Mr. Snively as its sole witness. The following exhibits were entered into evidence by agreement of the parties: Petitioner's Exhibits 1 to 11 (also designated as A to K).²

On March 28, 2025, the undersigned entered a notice allowing the parties the opportunity to file proposed recommended orders on or before April 7, 2025. The parties timely filed their respective Proposed Recommended Orders on April 7, 2025, which the undersigned has carefully considered.

FINDINGS OF FACT

These Findings of Fact are based on the testimony presented at the final hearing, the credibility of the witnesses, the exhibits entered into evidence at the final hearing, the parties' concise statement of stipulated facts contained in their Pre-Hearing Stipulation, and matters officially recognized in the Order of Pre-Hearing Instructions:

¹ Ms. Aguilar did not object to Mr. Snively both serving as Whisper Lakes HOA's attorney and testifying regarding his personal knowledge of the Proposed Revived Declaration. As such, Ms. Aguilar waived any objection thereto.

Whisper Lakes HOA did not object to Ms. Aguilar testifying on her own behalf or presenting Mr. McKay and Mr. Snively as witnesses. As such, Whisper Lakes HOA waived any objection thereto. In any event, the undersigned would have still permitted Ms. Aguilar to present the testimony of all three witnesses, as there was no prejudice or unfair surprise from Ms. Aguilar testifying, and because Ms. Aguilar timely identified all of Whisper Lakes HOA's witnesses as potential witnesses, including Mr. McKay and Mr. Snively.

² As discussed on the record, the parties agreed to the admission of all of Ms. Aguilar's exhibits subject to Whisper Lakes HOA's objection to any legal conclusions or case law contained in the exhibits, and the undersigned resolving any questions of law notwithstanding any legal conclusions or case law contained in the exhibits.

1. Ms. Aguilar is the owner of the parcel of real property located at 11894 Atlin Drive, Orlando, Florida 32837. Her parcel is located within the Whisper Lakes HOA community.

2. Whisper Lakes HOA is a Florida not for profit corporation that serves as the governing body for Whisper Lakes Unit 2, which is located in Orlando, Florida.

3. The Department of Commerce is the state agency responsible for reviewing—and ultimately approving or denying—submissions from communities seeking to revive declarations of covenants that have ceased to govern in their respective communities.

4. Sections 720.403 to 720.407 provide the mechanism by which a homeowners' association may revitalize its restrictive covenants. As a homeowners' association, Whisper Lakes HOA is eligible to seek revitalization under Florida law.

5. Whisper Lakes HOA's restrictive covenants are outlined in the Declaration of Easements, Covenants, Conditions, and Restrictions for Whisper Lakes HOA ("Declaration"), which was originally recorded July 29, 1988, at Book 4001, Page 2152, in the public records of Orange County, Florida, and thereafter amended by amendments recorded in the public records of Orange County, Florida.

6. The First Amendment to the Declaration of Easements, Covenants, Conditions, and Restrictions for Whisper Lakes HOA ("First Amendment to Declaration") was recorded on October 3, 1988, Official Records Book 4019, Page 1335, in the public records of Orange County, Florida.

7. The Second Amendment to the Declaration of Easements, Covenants, Conditions, and Restrictions for Whisper Lakes HOA ("Second Amendment to Declaration") was recorded on October 28, 1988, Official Records Book 4027, Page 895, in the public records of Orange County, Florida.

8. The Articles of Incorporation of Whisper Lakes HOA (“Articles of Incorporation”) were recorded on August 23, 1988, with the State of Florida, Division of Corporations. The Articles of Incorporation have never expired.

9. On or about July 29, 2018—30 years after the Declaration was originally recorded—Whisper Lakes HOA’s restrictive covenants as outlined in the Declaration, the First Amendment to Declaration, and the Second Amendment to Declaration expired. Ms. Aguilar’s parcel of property was subject to Whisper Lakes HOA’s restrictive covenants as outlined in the Declaration, the First Amendment to Declaration, and the Second Amendment to Declaration before those restrictive covenants expired on or about July 29, 2018.

10. The Bylaws of Whisper Lakes HOA (“Bylaws”) were adopted on November 23, 2023, pursuant to the Articles of Incorporation.

11. On November 29, 2023, Whisper Lakes HOA’s revitalization committee sent a letter and a revitalization Consent Packet (“Consent Packet”) to all of the members of Whisper Lakes HOA. The names, addresses, and contact information of the three members of the revitalization committee—Victor Ramirez, Jose Martino, and Donald Neill—were listed on the letter. Mr. Ramirez and Mr. Martino are parcel owners whose parcels are located within the Whisper Lakes HOA community. Mr. Neill is the registered agent for and is authorized to act on behalf of Diversified Concepts Services, LLC,³ whose parcel is also located within the Whisper Lakes HOA community. However, the address listed for Mr. Neill is not the address for Diversified Concepts Services, LLC; it is the address for another parcel owner whose parcel is located within the Whisper Lakes HOA community. The Consent Packet included copies of four items: (1) Whisper Lakes HOA’s governing documents sought to be revitalized (including its Declaration, First Amendment to Declaration, Second Amendment to Declaration, Articles of

³ Diversified Concepts Services, LLC, is managed by the Donald and Debra Neill Revocable Trust, of which Mr. Neill and his wife are both authorized members and owners.

Incorporation, and Bylaws); (2) a list of the parcels affected (broken down by legal description, name of parcel owner, and the like); (3) a plat (with a graphical depiction of the parcels affected); and (4) a written joinder and consent form. The only existing bylaws of Whisper Lakes HOA—i.e., the Bylaws adopted on November 23, 2023—were provided to all Whisper Lakes HOA parcel owners. The letter requested that all members of Whisper Lakes HOA try to return copies of their completed written joinder and consent forms no later than December 15, 2023, or December 31, 2023.⁴ Mr. Snively reviewed the most recent tax assessment, property appraiser, and deed information for each parcel simultaneously with preparing the legal description of each parcel, such that the list of parcel owners submitted by the organizing committee for Whisper Lakes HOA to the parcel owners (and later to the Department of Commerce) was based on the last completed tax assessment roll at the time the Proposed Revived Declaration was submitted to the parcel owners for approval. Petitioner’s Exhibit F contains a copy of the letter and a portion of the Consent Packet.

12. On August 15, 2024, Mr. Snively sent a letter and a revitalization Approval Packet (“Approval Packet”) to the Department of Commerce for review pursuant to chapter 720. The Approval Packet included eight items: (1) a verification of copies of the previous declaration of covenants and other previous governing documents for Whisper Lakes HOA (“Verification of Governing Documents”); (2) the previous declaration of covenants and other previous governing documents for Whisper Lakes HOA; (3) legal descriptions of each parcel to be subject to revitalization and other governing documents (“List of Parcel Information”); (4) graphical depictions of affected parcels; (5) an affidavit of compliance (“Affidavit of Compliance”); (6) verification of written consents (“Verification of Written Consents”); (7) written joinders and consents to the revitalized declaration of covenants and governing documents

⁴ The December 15, 2023, date appears to be a scrivener’s error due to a line break followed by a re-duplication of certain language on the second and third pages of the letter.

of Whisper Lakes HOA (“List of Consents”); and (8) the letter sent to all of the members of Whisper Lakes HOA by Whisper Lakes HOA’s revitalization committee on November 29, 2023. The Verification of Governing Documents was signed by Mr. Ramirez on August 8, 2024. The Affidavit of Compliance was signed by Mr. Martino on August 8, 2024. The Verification of Written Consents was signed by Mr. Ramirez on August 8, 2024. Petitioner’s Exhibit I contains a copy of the letter and the Approval Packet.

13. The List of Parcel Information identified a total of 144 affected parcel owners. The affected parcel owners include individual persons, limited liability corporations, trusts, homeowners’ association entities, and governmental entities.

14. The List of Parcel Information identified a total of 107 affected parcels.

15. The List of Consents contained the valid signatures—i.e., valid votes—of 71 of the 144 affected parcel owners identified in the List of Parcel Information. By signing their respective consent forms, each of the 71 affected parcel owners thereby agreed in writing to the Proposed Revived Declaration.⁵

16. The Proposed Revived Declaration was only agreed to by 71 of the 144 affected parcel owners. In other words, the Proposed Revived Declaration was agreed to by less than 50 percent plus one of the affected parcel owners.

17. On October 11, 2024, the Department of Commerce issued its Approval Letter approving the Proposed Revived Declaration. The subject line of the Department’s Approval Letter is entitled “Whisper Lakes Unit 2

⁵ A very small number of invalid votes were cast by individual persons whose names are not contained in the List of Parcel Information and who do not appear to be associated with a limited liability corporation, trust, homeowners’ association entity, or governmental entity identified in the List of Parcel Information. These invalid votes have been excluded from the total number of valid votes.

A very small number of duplicative signed consents—i.e., duplicate copies of signed consents by the same persons and multiple signed consents by persons that own more than one parcel—have also been excluded from the total number of valid votes. Each person’s valid vote has been counted once.

Homeowner's Association, Inc., Approval Determination Number: 24193."

The Department's Approval Letter included a page entitled "Notice of Administrative Rights." Among other things, it stated that "any person whose substantial interests are affected by this determination has the opportunity for an administrative proceeding pursuant to section 120.569, Florida Statutes, by filing a petition," "a petition must be filed with the agency clerk of the Florida Department of Commerce within 21 calendar days of receipt of this determination," and "you waive the right to any administrative proceeding if you do not file a petition with the agency clerk within 21 calendar days of receipt of this determination." Petitioner's Exhibit J contains a copy of the Approval Letter.

18. On October 30, 2024, Whisper Lakes HOA received a copy of the Department of Commerce's Approval Letter dated October 11, 2024. On November 19, 2024, Whisper Lakes HOA recorded a certificate, the revitalized documents, and the Approval Letter—a total of 63 pages—in the public records of Orange County, Florida. Petitioner's Exhibit J contains a copy of the certificate, the revitalized documents, and the Approval Letter.

19. On November 19, 2024, Whisper Lakes HOA mailed a letter and a certificate—a total of three pages—to all of the members of Whisper Lakes HOA. The letter stated that Whisper Lakes HOA "has taken action to revitalize the Association's Declaration ... in the public records of Orange County, Florida" and that "[e]nclosed herein is a copy of the Marketable Record Title Act Notice ... [that] can also be located at Document # 20240662616 in the public records of Orange County, Florida." The certificate stated that it included the "documents" that have been "revived," as well as the Department of Commerce's letter of "approval." However, none of those documents were included. Moreover, neither the letter nor the certificate referenced a point of entry for challenging the Department's Approval Letter. Petitioner's Exhibit C contains a copy of the letter and the certificate.

20. Mr. Snively served as Whisper Lakes HOA's attorney during the revitalization process. He credibly testified regarding the revitalization process, which he was directly involved with.

21. Mr. McKay is employed by the Department of Commerce. He has worked on the revitalization program for approximately 14 years. He credibly testified regarding the Department of Commerce's review and approval of Whisper Lakes HOA's Proposed Revived Declaration.

22. Ms. Aguilar credibly testified regarding the revitalization-related documents she received—and did not receive—prior to this proceeding.

23. On November 25, 2024, Ms. Aguilar received a copy of the three-page letter and certificate dated November 19, 2024, from Whisper Lakes HOA. However, prior to filing her Initial Petition, she never received a copy of the Department of Commerce's Approval Letter dated October 11, 2024, from Whisper Lakes HOA or the Department.⁶ As a result, she sent an email to Mr. McKay on November 12, 2024, asking "[w]ho is responsible for providing [the Department of Commerce's] Notice of Administrative Rights to homeowners?" As Ms. Aguilar testified, she had only become aware of the 21-day period to file an administrative petition under Florida Administrative Code Rule 28-106.111 after performing legal research, and she was merely inquiring in the email when she would receive a copy of the Department's Approval Letter dated October 11, 2024, in order to calculate when the 21-day period would begin to run. On November 12, 2024, Mr. McKay responded that it "would be [Whisper Lakes HOA], once the approved documents have been recorded." Petitioner's Exhibit B contains copies of these emails. On December 13, 2024, Ms. Aguilar searched the public records of Orange County, Florida, and found a copy of the Department's Approval Letter dated October 11, 2024.

⁶ Prior to filing her Initial Petition, Ms. Aguilar also never received a copy of the Proposed Revived Declaration documents filed by Whisper Lakes HOA in the public records of Orange County, Florida, from either Whisper Lakes HOA or the Department of Commerce.

24. Ms. Aguilar also credibly testified regarding the documents she filed in this proceeding and her other interactions with the Department of Commerce.

25. On December 23, 2024, Ms. Aguilar submitted her Initial Petition to the Department of Commerce via email. However, as Ms. Aguilar testified, the Department of Commerce was closed on December 23, 24, and 25, 2024, for state holidays. Accordingly, Ms. Aguilar received an email from the Department of Commerce on December 27, 2024, indicating that her Initial Petition was received on December 26, 2024. Ms. Aguilar's email dated December 23, 2024, is entitled in relevant part "Administrative Proceedings Request Department of Commerce Revitalization Determination # 24193." Her email stated: "Attached please find [my] request for Administrative Proceedings challenging the Department of Commerce[s] Revitalization Determination # 24193, dated October 11, 2024." The response email from the agency clerk for the Department of Commerce dated December 27, 2024, stated: "Your three-part petition was received as of Thursday, December 26, 2024, and will be processed accordingly." Petitioner's Exhibit A contains copies of these emails.

26. On January 6, 2025, Ms. Aguilar submitted her Amended Petition to the Department of Commerce via email. Ms. Aguilar's email dated January 6, 2025, is entitled "Amended Administrative Proceedings Request Department of Commerce Revitalization Determination # 24193" and stated in relevant part "My apologies but I received further evidence to support my case, and I decided to amend my petition. ... Please let me know if you have any questions." On January 7, 2025, after Ms. Aguilar submitted a PDF of her Amended Petition to the Department of Commerce, Ms. Aguilar received an email from the agency clerk for the Department of Commerce that stated: "We have received all of your documents." Petitioner's Exhibit A contains copies of these emails.

CONCLUSIONS OF LAW

27. DOAH has jurisdiction over the parties and subject matter of this case. §§ 120.569, 120.57(1), Fla. Stat.

28. This is a “de novo” proceeding. *See* § 120.57(1)(k), Fla. Stat.

29. Findings of fact in this proceeding must “be based on a preponderance of the evidence, ... and shall be based exclusively on the evidence of record and on matters officially recognized.” § 120.57(1)(j), Fla. Stat. A “preponderance of the evidence” means the “greater weight” of the evidence, or evidence that “more likely than not” tends to prove the fact at issue. *Damren v. State*, 397 So. 3d 607, 611 n.2 (Fla. 2023) (citations and internal quotation marks omitted).

30. Hearsay evidence “may be used for the purpose of supplementing or explaining other evidence, but it shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.”

§ 120.57(1)(c), Fla. Stat.; *see also* Fla. Admin. Code R. 28-106.213(3).

Timeliness

31. The parties dispute whether Ms. Aguilar’s administrative petition is timely. As explained below, the greater weight of the evidence showed that her administrative petition was timely filed.

32. Ms. Aguilar carries the burden of proving that her administrative petition was timely filed. *See Bd. of Trustees of Nw. Fla. Cmty. Hosp. v. Dep’t of Mgmt. Servs., Div. of Ret.*, 651 So. 2d 170, 172 (Fla. 1st DCA 1995) (“The general rule is, that as in court proceedings, the burden of proof, apart from statute, is on the party asserting the affirmative of an issue before an administrative tribunal.” (citation omitted)); *see also SRQUS, LLC v. Sarasota Cnty.*, Case No. 13-1219, 2013 WL 5769215, at *6 (Fla. DOAH Oct. 18, 2013; Fla. DEP Nov. 20, 2013) (“Petitioner has the burden of proving that the Petition was timely filed since its timeliness has been challenged by [Respondent].”).

33. Rule 28-106.111 is entitled “Point of Entry into Proceedings and Mediation.” It governs the timeliness of administrative petitions and provides in relevant part:

(1) The notice of agency decision shall contain the information required by [s]ection 120.569(1). ...

(2) Unless otherwise provided by law, persons seeking a hearing on an agency decision which does or may determine their substantial interests shall file a petition for hearing with the agency within 21 days of receipt of written notice of the decision.

* * *

(4) Any person who receives written notice of an agency decision and who fails to file a written request for a hearing within 21 days waives the right to request a hearing on such matters. ...

Fla. Admin. Code R. 28-106.111(1), (2), (4); *see also* § 120.569(1), Fla. Stat. (“Each notice shall inform the recipient of any administrative hearing or judicial review that is available under this section, s[ection] 120.57, or s[ection] 120.68; shall indicate the procedure which must be followed to obtain the hearing or judicial review; and shall state the time limits which apply.”).

34. Therefore, unless otherwise provided by law, the 21-day period for filing an administrative petition under rule 28-106.111 does not begin to run until a petitioner receives an agency’s written notice of its decision.

35. Determining whether a petitioner received an agency’s written notice of its decision is a factual issue. *See Accardi v. Dep’t of Env’tl. Prot.*, 824 So. 2d 992, 995 (Fla. 4th DCA 2002) (“[T]he timeliness of the petition presents a disputed issue of fact that must be resolved below in the administrative process.”).

36. In this case, the applicable written notice is the Department of Commerce’s Approval Letter dated October 11, 2024, which approved the

Proposed Revived Declaration. On its face, the Approval Letter contains all of the elements required by section 120.569(1).

37. The greater weight of the evidence presented at the final hearing showed that Ms. Aguilar never received a copy of the Department of Commerce's Approval Letter from Whisper Lakes HOA or the Department. Therefore, Whisper Lakes HOA must prove that Ms. Aguilar received actual notice by other means in order to show if and when the 21-day period began to run for her to file an administrative petition challenging the Department's approval of the Proposed Revived Declaration. *See Wentworth v. State, Dep't of Env'tl. Prot.*, 771 So. 2d 1279, 1281 (Fla. 4th DCA 2000) (determining that "a clear point of entry" to challenge agency action was triggered by "actual notice"); *see also Cons. All. of St. Lucie Cnty., Inc., v. Ft. Pierce Util. Auth.*, Case No. 09-1588, 2013 WL 2371793, at *10 n.4 (Fla. DOAH May 24, 2013; Fla. DEP July 8, 2013) ("[W]hen notice has not been published or provided by a means by which a date certain may be established, and the issue is the date upon which a substantially affected person received actual notice, ... parties seeking to establish waiver based on the passage of time following action claimed as final must show that the party affected by such action has received sufficient notice to commence the running of the time period within which review must be sought." (citation and emphasis omitted)).⁷

38. Whisper Lakes HOA contends that Ms. Aguilar had sufficient notice when she sent an email to the Department of Commerce on November 12, 2024, indicating she was aware of the 21-day period. However,

⁷ Although Whisper Lakes HOA recorded in the public records of Orange County, Florida, all of the approved recorded documents, including the Department's Approval Letter dated October 11, 2024, merely recording the Department's Approval Letter did not constitute notice by publication. In any event, written or actual notice was required because chapter 720 does not authorize notice by publication. *See* § 720.407(4), Fla. Stat. ("Immediately after recording the documents, a complete copy of all of the approved recorded documents must be mailed or hand delivered to the owner of each affected parcel."); § 720.407(3), Fla. Stat. ("The recorded documents shall include ... the letter of approval by the department ...").

Ms. Aguilar credibly testified that she only became aware of the 21-day period after performing legal research and that she was merely inquiring in the email when she would receive a copy of the Department's Approval Letter dated October 11, 2024, in order to calculate when the 21-day period would begin to run. The email supplements Ms. Aguilar's testimony. *See* § 120.57(1)(c), Fla. Stat.

39. Whisper Lakes HOA contends that the letter it mailed to Ms. Aguilar on November 19, 2024, provided her with sufficient notice. Ms. Aguilar admittedly received that letter on November 25, 2024. However, it was legally insufficient to constitute written notice under rule 28-106.111 because it lacked a copy of the Department's Approval Letter. It was also legally insufficient to constitute actual notice because it merely pointed Ms. Aguilar to publicly available records where, upon sifting through many pages of records, she might locate the Department's Approval Letter.

40. Whisper Lakes HOA further contends that Ms. Aguilar received sufficient notice when she eventually reviewed the public records and found the Department's Approval Letter. Ms. Aguilar admittedly reviewed the public records and found the Department's Approval Letter on December 13, 2024. She thus received actual notice of the letter on that date. However, the greater weight of the evidence presented at the final hearing showed that Ms. Aguilar submitted her Initial Petition to the Department of Commerce on December 23, 2024, and that the Department of Commerce timely received her Initial Petition on December 26, 2024. As such, Ms. Aguilar's Initial Petition was timely filed within the requisite 21 days—i.e., within 13 days of her receiving actual notice of the Department's Approval Letter. *See* Fla. Admin. Code R. 28-106.104(1) (“[F]iling shall mean received by the office of the agency clerk during normal business hours . . .”).⁸

⁸ The Department of Commerce's email correspondence with Ms. Aguilar dated December 27, 2024, stating that her Initial Petition was received by the Department on December 26, 2024, is not inadmissible hearsay because it satisfies the public records hearsay exception. *See* § 90.803(8), Fla. Stat.

41. Whisper Lakes HOA asserts that the Amended Petition is untimely because it was first filed at DOAH on January 21, 2025.⁹ But that contention fails because the timeliness of this administrative proceeding is contingent on the timeliness of the Initial Petition—not the timeliness of the Amended Petition. *See, e.g.*, Fla. Admin. Code R. 28-106.111(2) (referring to “a petition for hearing”); Fla. Admin. Code R. 28-106.111(3) (referring to “an initial pleading”); Fla. Admin. Code R. 28-106.111(4) (referring to “a written request for a hearing”).

42. In sum, because Ms. Aguilar’s Initial Petition was timely filed, Ms. Aguilar did not waive her right to request an administrative hearing.

Merits

43. The parties dispute whether Whisper Lakes HOA’s Proposed Revived Declaration satisfies all of the statutory requirements for revitalization raised by Ms. Aguilar. As explained below, the greater weight of the evidence showed that many—but not all—of those statutory requirements for revitalization have been met.

44. As explained previously, sections 720.403 to 720.407 govern the process by which a homeowners’ association may revitalize its restrictive covenants.

45. Whisper Lakes HOA carries the burden of proving that the Proposed Revived Declaration complies with all of the statutory requirements of sections 720.403 to 720.407 raised by Ms. Aguilar. *See Bd. of Trustees of Nw. Fla. Cmty. Hosp.*, 651 So. 2d at 171-72 (explaining that the hearing officer determined the party “seeking to change the status quo ... should have the burden of proof in the administrative proceeding” and holding that the hearing officer “correctly determined” the party seeking to change the “status quo” had the “burden” of proof); *see also id.* at 172 (“The general rule is, that

⁹ In actuality, the Amended Petition was first filed at the Department of Commerce on or about January 7, 2025. It was then referred to DOAH by the Department of Commerce on January 21, 2025. *See* Fla. Admin. Code R. 28-106.201(3).

as in court proceedings, the burden of proof, apart from statute, is on the party asserting the affirmative of an issue before an administrative tribunal.” (citation omitted)).

46. The undersigned acknowledges that the Department of Commerce has previously determined that the person challenging a revitalization approval bears the burden of proof. *See Richard Payton v. Apollo Beach Unit Six, Lots 26-54*, Case No. 23-3364, et al., 2024 WL 3333771, at *5 (Fla. DOAH July 3, 2024), *rejected in part*, Case No. 24-040, at *6-7 (Fla. Dep’t of Com. Sept. 25, 2024). Respectfully, the better view is that the burden of proof rests with the person or entity seeking a revitalization approval. *See Richard Payton*, 2024 WL 3333771, at *5. A 30,000 foot view of the status quo at issue in a revitalization proceeding clarifies the burden-of-proof issue. *See Byrd v. Black Voters Matter Capacity Bldg. Inst., Inc.*, 339 So. 3d 1070, 1079 (Fla. 1st DCA 2022) (referring to the “status quo” as “the last actual, peaceable, noncontested condition which preceded the pending controversy” (citation omitted)). Recall that an administrative hearing to consider proposed agency action on a revitalization request is a “de novo” proceeding designed to assist the Department of Commerce in formulating its final agency action. *See* § 120.57(1)(k), Fla. Stat; *see also Boca Raton Artificial Kidney Ctr., Inc. v. Fla. Dep’t of HRS*, 475 So. 2d 260, 262 (Fla. 1st DCA 1985) (explaining that the “proper role” of a section 120.57 hearing in the administrative process is to “aid in the formulation of final agency action” rather than to “solely ... review ... action taken earlier and preliminarily”). Necessarily then, a revitalization approval that is timely challenged under section 120.57 is tentative, non-final agency action. *See Fla. Dep’t of Transp. v. J.W.C. Co., Inc.*, 396 So. 2d 778, 789 (Fla. 1st DCA 1981) (holding that “once a formal hearing is requested, there is no ‘presumption of correctness’ in the mere fact that in preliminary proceedings the [agency] has issued its ‘notice of intent’ to [take final agency action]”). The “status quo” in a revitalization proceeding is a lapsed declaration of covenants and restrictions; a revitalization approval

seeks to change the “status quo” by revitalizing a lapsed declaration of covenants and restrictions.¹⁰ From this vantage point, it becomes clear that the person or entity seeking a revitalization approval is the one actually “asserting the affirmative of [the revitalization approval] issue” because they are seeking to change the “status quo” from a lapsed declaration to a revitalized one. *See Bd. of Trustees of Nw. Fla. Cmty. Hosp.*, 651 So. 2d at 171-72 (citation omitted). In this case, that means the burden of proving entitlement to a revitalization approval rests with Whisper Lakes HOA—not Ms. Aguilar.¹¹

47. In any event, regardless of whether the burden of proof rests with Whisper Lakes HOA or Ms. Aguilar, the result would still be the same in light of the evidence presented in this case.

¹⁰ A revitalization approval that is timely challenged under section 120.57 cannot be considered the “status quo” at issue in a revitalization proceeding because, among other reasons, it was never an “actual condition” that preceded the pending controversy. *See, e.g., Lynch v. Fla. Dep’t of Law Enf’t*, 278 So. 3d 145, 146 * (Fla. 1st DCA 2019) (distinguishing between “final agency action” and “preliminary agency action that will not mature into final agency action until after a proceeding under section 120.57”); *Fla. League of Cities, Inc. v. Admin. Comm’n*, 586 So. 2d 397, 413 (Fla. 1st DCA 1991) (“Until proceedings are had satisfying section 120.57, or an opportunity for them is clearly offered and waived, there can be no agency action affecting the substantial interests of a person.”).

¹¹ The undersigned does not address whether or how the “status quo” burden of proof principle might apply to other types of administrative proceedings. However, the undersigned acknowledges that statutes or case law may resolve who has the burden of proof in other types of administrative proceedings.

48. Turning to the merits, and for ease of reference, each of the 19 alleged violations of sections 720.403 to 720.407 raised by Ms. Aguilar in the parties' Pre-Hearing Stipulation are separately addressed below.^{12,13}

First alleged violation – section 720.404(3)(c)

49. Ms. Aguilar asserts that the Proposed Revived Declaration violates section 720.404(3)(c) because it is allowed to govern fewer than all parcels previously governed. The undersigned disagrees.

50. Section 720.404(3)(c) provides: “The revived declaration may not contain covenants that are more restrictive on the parcel owners than the covenants contained in the previous declaration, except that the declaration *may* ... [g]overn fewer than all of the parcels governed by the previous declaration.” (Emphasis added.) The statute thus plainly allows—but does not require—the Proposed Revived Declaration to govern fewer than all of the parcels governed by the previous Declaration. *See Wheaton v. Wheaton*, 261

¹² In the parties' Pre-Hearing Stipulation, Ms. Aguilar also requests “a judicial determination that the covenants and restrictions no longer apply to her property as of October 1, 2018, and that any attempt to revive or reinstate these covenants would unconstitutionally deprive her of her rights.” However, because DOAH is an executive branch tribunal of limited jurisdiction and limited quasi-judicial power, the undersigned lacks both jurisdiction to consider these issues and judicial power to provide such relief. *See, e.g., Ag. for Pers. with Disab. v. Meadowview Progressive Care Group Home*, 340 So. 3d 547, 550-51 (Fla. 1st DCA 2022) (“The scope of the ALJ’s jurisdiction is defined by the statutes and rules governing administrative actions.”); *Fla. Elections Comm’n v. Davis*, 44 So. 3d 1211, 1215 (Fla. 1st DCA 2010) (“The Division of Administrative Hearings is no exception to the rule that administrative agencies are creatures of statute and have only such powers as statutes confer.” (citation, internal quotation marks, and brackets omitted)); *compare* art. V, § 1, Fla. Const. (“The judicial power shall be vested in a supreme court, district courts of appeal, circuit courts and county courts.”), *with* art. V, § 1, Fla. Const. (“[A]dministrative officers or bodies may be granted quasi-judicial power in matters connected with the functions of their offices.”).

¹³ To the extent Ms. Aguilar raises additional alleged violations in her Proposed Recommended Order, any such additional alleged violations are waived. *See Erich Nikorowicz v. Antiquers Aerodrome, Inc.*, Case Nos. 15-7236, 15-7237, 2017 WL 838507, at *9 n.8 (Fla. DOAH Feb. 24, 2017; Fla. DEO May 25, 2017) (“Petitioners waived this argument by failing to allege it in their petitions or in their pre-hearing stipulations/statement.”). Regardless, because the undersigned has determined that the Proposed Revived Declaration should be disapproved for the reasons identified in the Conclusions of Law of this Recommended Order, it is unnecessary to address any additional alleged violations raised by Ms. Aguilar. *See id.*

So. 3d 1236, 1243 (Fla. 2019) (“The word ‘may’ when given its ordinary meaning denotes a permissive term rather than the mandatory connotation of the word ‘shall.’” (citation omitted)).

51. Presumably, Ms. Aguilar is asserting that her parcel should have been excluded from the Proposed Revived Declaration under section 720.404(3)(c). However, the statute simply did not require Ms. Aguilar’s parcel or any other parcel to be excluded from the Proposed Revived Declaration. Including rather than excluding Ms. Aguilar’s parcel from the Proposed Revived Declaration is consistent with section 720.404(3)(c).

Second alleged violation – section 720.405(1)

52. Ms. Aguilar asserts that the Proposed Revived Declaration violates section 720.405(1) because a member of the organizing committee did not meet the statutory requirements. The undersigned disagrees.

53. Section 720.405(1) provides in relevant part:

The proposal to revive a declaration of covenants and an association for a community under the terms of this act shall be initiated by an organizing committee consisting of not less than three parcel owners located in the community that is proposed to be governed by the revived declaration.

54. The greater weight of the evidence showed that Whisper Lakes HOA’s organizing committee was comprised of three parcel owners—i.e., Mr. Ramirez, Mr. Martino, and Mr. Neill—whose parcels (or in the case of Mr. Neill the parcel of Diversified Concepts Services, LLC, which Mr. Neill is the registered agent for and which he and his wife own through their revocable trust) are located in the Whisper Lakes HOA community proposed to be governed by the Proposed Revived Declaration. This is consistent with section 720.405(1).

Third alleged violation – section 720.405(1)

55. Ms. Aguilar asserts that the Proposed Revived Declaration violates section 720.405(1) because Whisper Lakes HOA failed to provide the required

details of the organizing committee in certain correspondences to her. The undersigned agrees, in part.

56. Section 720.405(1) provides in relevant part:

The name, address, and telephone number of each member of the organizing committee must be included in any notice or other document provided by the committee to parcel owners to be affected by the proposed revived declaration.

57. The greater weight of the evidence showed that certain letters sent solely by Whisper Lakes HOA's attorney to the Whisper Lakes HOA community did not include the name, address, or telephone number of each member of the organizing committee. But the statute did not require letters sent solely by an HOA attorney to include such information. Under the statute, the name, address, and telephone number of each member of the organizing committee must be included in any notice or other document *provided by the committee* to parcel owners to be affected by the proposed revived declaration. These letters were consistent with section 720.405(1).

58. However, the greater weight of the evidence showed that the letter sent by the organizing committee to the Whisper Lakes HOA community on November 29, 2023, contained an incorrect address for one of the members of the organizing committee. The address listed for Mr. Neill within the letter is not the address for Diversified Concepts Services, LLC; it is the address for another parcel owner whose parcel is located within the Whisper Lakes HOA community. Although perhaps a scrivener's error, the statute is clear that the address of each member of the organizing committee must be included in any notice or other document provided by the committee to parcel owners to be affected by the proposed revived declaration. Thus, this particular letter violated section 720.405(1).

Fourth alleged violation – section 720.405(2)

59. Ms. Aguilar asserts that the Proposed Revived Declaration violates section 720.405(2) because the list of parcel owners submitted to the

Department of Commerce was not based on the most recent tax assessment roll from the Orange County Appraiser's Office. The undersigned disagrees.

60. Section 720.405(2) provides:

The organizing committee shall prepare or cause to be prepared the complete text of the proposed revised declaration of covenants to be submitted to the parcel owners for approval. The proposed revived documents must identify each parcel that is to be subject to the governing documents by its legal description, and by the name of the parcel owner or the person in whose name the parcel is assessed on the last completed tax assessment roll of the county at the time when the proposed revived declaration is submitted for approval by the parcel owners.

61. The greater weight of the evidence showed that the list of parcel owners submitted by the organizing committee for Whisper Lakes HOA to the parcel owners (and later to the Department of Commerce) was based on the last completed tax assessment roll at the time the Proposed Revived Declaration was submitted to the parcel owners for approval. This is consistent with section 720.405(2).

Fifth alleged violation – section 720.405(3)

62. Ms. Aguilar asserts that the Proposed Revived Declaration violates section 720.405(3) because Whisper Lakes HOA failed to provide the existing bylaws to the parcel owners. The undersigned disagrees.

63. Section 720.405(3) provides:

The organizing committee shall prepare the full text of the proposed articles of incorporation and bylaws of the revived association to be submitted to the parcel owners for approval, unless the association is then an existing corporation, in which case the organizing committee shall prepare the existing articles of incorporation and bylaws to be submitted to the parcel owners.

64. The greater weight of the evidence showed that the only existing Bylaws of Whisper Lakes HOA—i.e., the Bylaws adopted on

November 23, 2023—were provided to all Whisper Lakes HOA parcel owners. This is consistent with section 720.405(3).

Sixth alleged violation – section 720.405(4)(a)

65. Ms. Aguilar asserts that the Proposed Revived Declaration violates section 720.405(4)(a) because the “Secretary Director” of Whisper Lakes HOA had two votes which resulted in an unfair disadvantage for other parcel owners. The undersigned disagrees.

66. Section 720.405(4)(a) provides that “[t]he proposed revived declaration and other governing documents for the community shall ... [p]rovide that the voting interest of each parcel owner shall be the same as the voting interest of the parcel owner under the previous governing documents.”

67. The greater weight of the evidence showed that the Proposed Revived Declaration provides the exact same voting interest to each Whisper Lakes HOA parcel owner as the voting interest of such parcel owners under the previous governing documents. To be clear, the Proposed Revived Declaration documents—i.e., the Declaration, the First Amendment to Declaration, the Second Amendment to Declaration, the Articles of Incorporation, and the Bylaws—are the same as they were under the previous governing documents. This is consistent with section 720.405(4)(a).¹⁴

68. Ms. Aguilar appears to believe that the Bylaws automatically provide Mr. Neill—the secretary of Whisper Lakes HOA’s board of directors—with an additional vote on the issue of revitalization. But they do not. Votes by members of Whisper Lakes HOA’s board of directors pursuant to the Bylaws,

¹⁴ Although the Bylaws were adopted after the expiration of the Declaration, the First Amendment to Declaration, and the Second Amendment to Declaration, the Bylaws were adopted pursuant to the non-expired Articles of Incorporation. *See generally* § 720.403(3), Fla. Stat. (“This part [Part III, Covenant Revitalization] is intended to provide mechanisms for the revitalization of covenants or restrictions”); § 720.404, Fla. Stat. (“Parcel owners in a community are eligible to seek approval from the Department of Commerce to revive a declaration of covenants”); §§ 720.405, 720.406, Fla. Stat. (distinguishing the “proposed revived declaration” from the “other governing documents”). Nevertheless, as part of the revitalization process, both the unexpired Bylaws and the unexpired Articles of Incorporation were required to be presented for approval. *See generally* §§ 720.405, 720.406, Fla. Stat.

absent perhaps a vote regarding revitalization legitimately taken by the board on behalf of Whisper Lakes HOA in its capacity as an affected parcel owner, are entirely distinct from votes by members of Whisper Lakes HOA regarding revitalization. In any event, Mr. Neill only voted once regarding revitalization on behalf of Diversified Concepts Services, LLC, in its capacity as an affected parcel owner.

Seventh alleged violation – sections 720.405(4)(d) and 720.404(3)

69. Ms. Aguilar asserts that the Proposed Revived Declaration violates sections 720.405(4)(d) and 720.404(3) because it includes prohibited restrictions that are more restrictive than the original Declaration. The undersigned disagrees.

70. For purposes of chapter 712, Florida Statutes, a “covenant or restriction” means “any agreement or limitation contained in a document recorded in the public records of the county in which a parcel is located which subjects the parcel to any use or other restriction or obligation.” § 712.01(2), Fla. Stat; *see generally Palm Beach Cnty. v. Cove Club Inv’rs Ltd.*, 734 So. 2d 379, 382 n.4 (Fla. 1999) (“Covenants are loosely defined as ‘promises in conveyances or other instruments pertaining to real estate.’” (citation omitted)); *Black’s Law Dictionary* 457 (11th ed. 2019) (defining the term “covenant” in relevant part as “[a] formal agreement or promise, usu. in a contract or deed, to do or not do a particular act”). The chapter 712 definition of a “covenant or restriction” generally applies to chapter 720. *See Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts* 252 (2012) (“Statutes in pari materia are to be interpreted together, as though they were one law.”); *see also* § 720.301(4), Fla. Stat. (defining the term “declaration of covenants” as “a recorded written instrument or instruments in the nature of covenants running with the land which subject the land comprising the community to the jurisdiction and control of an association or associations in which the owners of the parcels, or their association representatives, must be members”).

71. Section 720.405(4)(d) provides that “[t]he proposed revived declaration and other governing documents for the community shall ... [c]ontain no covenants that are more restrictive on the affected parcel owners than the covenants contained in the previous governing documents, except as permitted under s[ection] 720.404(3).”

72. Section 720.404(3) provides that “[t]he revived declaration may not contain covenants that are more restrictive on the parcel owners than the covenants contained in the previous declaration, except that the declaration may ... [p]rovide for amendments to the declaration and other governing documents.”

73. As explained previously, the greater weight of the evidence showed the Declaration, the First Amendment to Declaration, the Second Amendment to Declaration, the Articles of Incorporation, and the Bylaws are the same as they were under the previous governing documents. As such, the documents necessarily contain no covenants that are more restrictive on the affected parcel owners than any covenants contained in the previous governing documents. Moreover, a review of the Bylaws shows that they do not contain any covenants whatsoever. The Bylaws merely govern the “regulation or management” of Whisper Lakes HOA’s “affairs” as a corporate entity. *See* § 617.01401(3), Fla. Stat. This is consistent with sections 720.405(4)(d) and 720.404(3).

74. To the extent that Ms. Aguilar is seeking to challenge the validity of specific provisions of the Declaration, the First Amendment to Declaration, the Second Amendment to Declaration, the Articles of Incorporation, or the Bylaws in light of subsequent legislative changes to chapter 720 or other statutes, such a challenge is not cognizable in this proceeding. The scope of this proceeding is limited to determining whether the Proposed Revived Declaration complies with the statutory requirements for revitalization—not whether the Declaration, the First Amendment to Declaration, the Second Amendment to Declaration, the Articles of Incorporation, or the Bylaws have

some sort of independent defect. *See generally* §§ 720.403-.407, Fla. Stat. (containing no authority for DOAH or the Department of Commerce to determine whether an entity’s governing documents have independent defects).

Eighth alleged violation – section 720.405(4)(d)

75. Ms. Aguilar asserts that the Proposed Revived Declaration violates section 720.405(4)(d) because the Bylaws adopted on November 23, 2023, are more restrictive than previous bylaws. The undersigned disagrees.

76. For purposes of chapter 720, the term “governing documents” means “[t]he recorded declaration of covenants for a community and all ... recorded amendments, supplements, and recorded exhibits thereto” and “[t]he articles of incorporation and bylaws of the homeowners’ association and any ... amendments thereto.” § 720.301(8)(a)-(b), Fla. Stat. As such, section 720.405(4)(d) applies to any bylaws adopted by Whisper Lakes HOA.

77. The greater weight of the evidence presented at the final hearing showed that the Bylaws are the only bylaws adopted to date by Whisper Lakes HOA. Because the Bylaws are the only bylaws adopted to date, they cannot contain covenants that are more restrictive on the affected parcel owners than any non-existing previous bylaws. Moreover, a review of the Bylaws shows that they do not contain any covenants whatsoever. This is consistent with section 720.405(4)(d).

Ninth alleged violation – Bylaws not duly adopted under chapter 617

78. Ms. Aguilar asserts that the Proposed Revived Declaration violates chapter 617, Florida Statutes, because the Bylaws were not duly adopted thereto, and that revitalization should therefore be denied. The undersigned disagrees.

79. Chapter 617 generally governs not for profit corporations.

80. Whether the Bylaws were duly adopted pursuant to chapter 617 has nothing to do with revitalization.

81. To the extent Ms. Aguilar is seeking to challenge the validity of the adoption of the Bylaws under chapter 617, such a challenge is not cognizable in this proceeding. The scope of this proceeding is limited to determining whether the Proposed Revived Declaration complies with the statutory requirements for revitalization—not whether the Bylaws contained in the Proposed Revived Declaration have some sort of independent defect.

See generally §§ 720.403-.407, Fla. Stat.

Tenth alleged violation – section 720.405(5)

82. Ms. Aguilar asserts that the Proposed Revived Declaration violates section 720.405(5) because the Proposed Revived Declaration was mailed after the dates the organizing committee sought consent from the affected parcel owners. The undersigned disagrees.

83. Section 720.405(5) provides:

A copy of the complete text of the proposed revised declaration of covenants, the proposed new or existing articles of incorporation and bylaws of the association, and a graphic depiction of the property to be governed by the revived declaration shall be presented to all of the affected parcel owners by mail or hand delivery not less than 14 days before the time that the consent of the affected parcel owners to the proposed governing documents is sought by the organizing committee.

84. The greater weight of the evidence showed that the Consent Packet was sent by the organizing committee to all Whisper Lakes HOA members on November 29, 2023, and that the organizing committee members of Whisper Lakes HOA asked all members of Whisper Lakes HOA to try to return copies of their completed written joinder and consent forms no later than either December 15, 2023, or December 31, 2023. In other words, December 15, 2023, was the earliest possible date that the organizing committee actually sought the consent of the affected parcel owners. December 15, 2023, is

more—not less—than 14 days after November 29, 2023. This is consistent with section 720.405(5).

Eleventh alleged violation – section 720.405(6)

85. Ms. Aguilar asserts that the Proposed Revived Declaration violates section 720.405(6) because illegitimate votes were cast in the revitalization process. The undersigned disagrees.

86. Section 720.405(6) provides in relevant part that “[a] majority of the affected parcel owners must agree in writing to the revived declaration of covenants and governing documents of the association.” *See also* § 720.406(1), Fla. Stat. (referring to obtaining “valid written consent” from a majority of the affected parcel owners).

87. The greater weight of the evidence showed that nearly all of the votes contained in the Consent Packet were legitimately cast by affected parcel owners who have parcels within the Whisper Lakes HOA community. Each of the legitimate votes was in fact signed in writing by an affected parcel owner. This is consistent with section 720.405(6).¹⁵

88. Regardless, the legitimacy of all of the votes cast in favor of the Proposed Revived Declaration is not dispositive in this case, as the section of this Recommended Order addressing the sixteenth alleged violation finds a separate violation of section 720.405(6).

Twelfth alleged violation – section 720.303(1)

89. Ms. Aguilar asserts that the Proposed Revived Declaration violates section 720.303(1) because the original bylaws were neither submitted nor recorded as required by law, and that revitalization should therefore be denied. The undersigned disagrees.

¹⁵ As explained previously, a very small number of invalid votes (as well as a very small number of duplicative signed consents) have been excluded from the total number of valid votes. However, just because some invalid votes (and some duplicative signed consents) were submitted does not invalidate the valid votes. To reiterate, each person’s valid vote has been counted once.

90. Section 720.303(1) generally describes the powers and duties of a homeowners' association.

91. Whether the Bylaws were properly submitted or recorded pursuant to section 720.303(1) has nothing to do with revitalization.

92. To the extent Ms. Aguilar is seeking to challenge the validity of the submission or recording of the Bylaws under 720.303(1), such a challenge is not cognizable in this proceeding. The scope of this proceeding is limited to determining whether the Proposed Revived Declaration complies with the statutory requirements for revitalization—not whether the Bylaws contained in the Proposed Revived Declaration have some sort of independent defect. *See generally* §§ 720.403-.407, Fla. Stat.

Thirteenth alleged violation – section 720.406(1)(b)

93. Ms. Aguilar asserts that the Proposed Revived Declaration violates section 720.406(1)(b) because the Verification of Governing Documents signed by Mr. Ramirez fails to meet the statutory requirements for verification. The undersigned agrees.

94. Section 720.406(1)(b) provides in relevant part that “[t]he submission [of the proposed revived governing documents and supporting materials to the Department of Commerce] must include ... [a] *verified* copy of the previous declaration of covenants and other previous governing documents for the community, including any amendments thereto.” (Emphasis added.)

95. Section 92.525, Florida Statutes, provides a statutory manner by which verification may be accomplished under oath or affirmation or by signing a written declaration. *See* § 92.525(1)-(2), Fla. Stat. Under section 92.525, a written declaration means “[u]nder penalties of perjury, I declare that I have read the foregoing [document] and that the facts stated in it are true,” followed by the signature of the person making the declaration, except when a verification on information or belief is permitted by law, in which case the words “to the best of my knowledge and belief” may be added. § 92.525(2), Fla. Stat. Section 92.525 “does not say that verification must be accomplished

in this fashion.” *Martinez v. Abraham Chevrolet-Tampa, Inc.*, 891 So. 2d 579, 582 (Fla. 2d DCA 2004). However, section 92.525 makes clear that “[t]he requirement that a document be verified means that the document must be signed or executed by a person and that the person must state under oath or affirm that the facts or matters stated or recited in the document are true, or words of that import or effect.” § 92.525(4)(c), Fla. Stat.

96. The greater weight of the evidence showed that on August 8, 2024, Mr. Ramirez signed the Verification of Governing Documents. The Verification of Governing Documents declares “[u]nder penalties of perjury” that the Proposed Revived Declaration includes “accurate copies” of the Declaration, the First Amendment to Declaration, the Second Amendment to Declaration, the Articles of Incorporation, and the Bylaws. The Verification of Governing Documents also declares that the declarant has read the verification and that “the facts alleged are true to the best of [his] knowledge and belief.” Because the text of section 720.406(1)(b) does not allow for a qualified verification based on knowledge and belief, the Verification of Governing Documents violates section 720.406(1)(b). *Cf. Ballinger v. Bay Gulf Credit Union*, 51 So. 3d 528, 529 (Fla. 2d DCA 2010) (“A verification which is improperly based on information and belief is insufficient to entitle the verifying party to relief because the verification is qualified in nature.”).

97. Whisper Lakes HOA emphasizes that Mr. Ramirez executed the Verification of Governing Documents under penalty of perjury in the presence of a notary, but the Verification of Governing Documents is still legally insufficient because it was based on “the best of [his] knowledge and belief” when such a qualified verification is not authorized by law. It further emphasizes that Mr. Snively testified at the final hearing that he was hereby attesting to the completeness and accuracy of the documents referenced in the Verification of Governing Documents, but the fact that this is a “de novo” hearing does not allow Whisper Lakes HOA to retroactively remedy the defect in the Verification of Governing Documents that was actually

submitted to the Department of Commerce pursuant to section 720.406(1)(b). It also emphasizes that the Affidavit of Compliance signed by Mr. Martino on August 8, 2024, contained in the Proposed Revived Declaration should be sufficient, but that Affidavit of Compliance is also legally insufficient because it does not verify that the Declaration, the First Amendment to Declaration, the Second Amendment to Declaration, the Articles of Incorporation, and the Bylaws included in the Proposed Revived Declaration submitted to the Department of Commerce are “true” or words of that import or effect. In any event, the Affidavit of Compliance was required by section 720.406(1)(e)—not section 720.406(1)(b). The statutorily required affidavit of compliance simply cannot carry water for the separate, statutorily required verification. In short, none of these arguments change the conclusion that the Verification of Governing Documents violates section 720.406(1)(b).

Fourteenth alleged violation – section 617.0701(4)(a)

98. Ms. Aguilar asserts that Proposed Revived Declaration violates section 617.0701(4)(a) because written consent was not delivered as required by law, and that revitalization should therefore be denied. The undersigned disagrees.

99. Section 617.0701(4)(a) generally governs “written consent” to certain corporate “action[s] required or permitted by this chapter [617] to be taken at an annual or special meeting of members ... without a meeting.”

100. Whether written consent was properly delivered pursuant to 617.0701(4)(a) has nothing to do with revitalization.

101. Section 720.406 governs the delivery of written consents for revitalization. *See* § 720.406(1)(d), Fla. Stat. (“The submission [of the proposed revived governing documents and supporting materials to the Department of Commerce] must include ... [a] verified copy of the written consents of the requisite number of the affected parcel owners approving the revived declaration”). The greater weight of the evidence showed that the

written consents for revitalization were properly delivered to the Department of Commerce. This is consistent with section 720.406(1)(d).

102. To the extent Ms. Aguilar is seeking to challenge the validity of the delivery of the written consents under 617.0701(4)(a), such a challenge is not cognizable in this proceeding. The scope of this proceeding is limited to determining whether the Proposed Revived Declaration complies with the statutory requirements for revitalization—not whether the written consents for revitalization have some sort of independent defect.

See generally §§ 720.403-.407, Fla. Stat.

Fifteenth alleged violation – section 720.406(1)(d)

103. Ms. Aguilar asserts that the Proposed Revived Declaration violates section 720.406(1)(d) because the Verification of Written Consents signed by Mr. Ramirez could only verify the consent of a limited number of individuals, which undermines the validity of other consents. The undersigned disagrees.

104. The greater weight of the evidence showed that the Proposed Revived Declaration submitted to the Department of Commerce included the Verification of Written Consents signed by Mr. Ramirez on August 8, 2024. The Verification of Written Consents is legally sufficient—it declares “[u]nder penalties of perjury” that attached thereto are “accurate copies” of the written consents related to the Proposed Revived Declaration and that the facts alleged in the verification are “true.” No qualification based on the best of knowledge and belief is contained within the Verification of Written Consents. This is consistent with section 720.406(1)(d).

Sixteenth alleged violation – section 720.405(6)

105. Ms. Aguilar asserts that the Proposed Revived Declaration violates section 720.405(6) because Whisper Lakes HOA failed to obtain the required majority for approval from the affected parcel owners. The undersigned agrees.

106. Section 720.405(6) provides in relevant part that “[a] majority of *the affected parcel owners* must agree in writing to the revived declaration of covenants and governing documents of the association.” (Emphasis added.)

107. The meaning of the text of section 720.405(6) is plain. A majority of the affected parcel owners—not a majority of the affected parcels—must agree in writing to the proposed revived declaration of covenants and the other governing documents of an association. § 720.405(6), Fla. Stat.; see *Sunset Cove Homeowners Ass’n, Inc. v. Dep’t of Econ. Opp.*, Case No. 22-3080, 2023 WL 2560334, at *7 (Fla. DOAH Mar. 13, 2023; Fla. DEO June 8, 2023) (“Section 720.405(6) clearly states that the proposed revived declaration and other governing documents of an association are approved when a majority of *the affected parcel owners* agree in writing or approve by a vote at a meeting.” (emphasis added)). Under the statute, a “parcel owner” is the person who owns a parcel of real property. See § 720.301(12), Fla. Stat. (defining the term “parcel owner” as “the record owner of legal title to a parcel”). Of course, a single parcel can be owned by multiple persons. See, e.g., *Beal Bank, SSB v. Almand & Assoc.*, 780 So. 2d 45, 54 (Fla. 2001) (“In the case of ownership of real property by husband and wife, the ownership in the name of both spouses vests title in them as tenants by the entireties.”); see also § 720.303(1), Fla. Stat. (referring to “an affected parcel owner or owners”); § 720.3085(6)(c), Fla. Stat. (referring to “all owners of the parcel”). The owner or owners of a parcel are “affected” within the meaning of the statute if a proposed revitalization seeks to impose any covenants or restrictions upon the parcel or to otherwise subject the parcel to the governing documents of a homeowners’ association. See § 720.405(6), Fla. Stat.; see also *The American Heritage Dictionary* 28 (5th ed. 2011) (defining the term “affected” in relevant part as “[a]cted upon, influenced, or changed”). Simply put, the statutory text requires a “majority”—50 percent plus one—of “the affected parcel owners” to agree in writing to the revived declaration of covenants and the other governing documents of the association.

See § 720.405(6), Fla. Stat. Otherwise, a proposed revitalization must be disapproved. See § 720.406(2)(b), Fla. Stat.

108. The textual distinction between “parcel owners” and “parcels” of real property matters. Section 720.405(6) refers to a majority of the affected parcel owners; it does not refer to a majority of the affected parcels. The terms “parcel owners” and “parcels” are distinct; the former refers to persons and the latter refers to real property. *Compare* § 720.301(12), Fla. Stat. (defining the term “parcel owner” as “the record owner of legal title to a parcel”), *with* § 720.301(11), Fla. Stat. (defining the term “parcel” in relevant part as “a platted or unplatted lot, tract, unit, or other subdivision of real property within a community, as described in the declaration ...”). Under the text of the statute enacted by the Legislature, each and every affected parcel owner has an equal say in whether to agree to a proposed revitalization.

109. The greater weight of the evidence showed that there are 144 parcel owners affected by the Proposed Revived Declaration. However, the greater weight of the evidence showed that only 71 of the parcel owners affected by the Proposed Revived Declaration agreed in writing to the Proposed Revived Declaration. In other words, less than a majority of the affected parcel owners—i.e., less than 50 percent plus one—agreed in writing to the Proposed Revived Declaration. Thus, Whisper Lakes HOA’s failure to obtain the required majority for approval from the affected parcel owners violates section 720.405(6).

110. Whisper Lakes HOA asserts that valid written consents were received from 56 of the 99 parcels located in Whisper Lakes HOA.¹⁶ But whether a majority of the affected parcels had at least one affected parcel owner agree in writing to the Proposed Revived Declaration is irrelevant. As explained previously, the plain language of section 720.405(6) requires a

¹⁶ In actuality, the List of Parcel Information identified a total of 107 affected parcels.

majority of “the affected parcel owners” to agree in writing to a Proposed Revived Declaration—not a majority of “the affected parcels.”

Seventeenth alleged violation – section 720.407(2)

111. Ms. Aguilar asserts that the Proposed Revived Declaration violates section 720.407(2) because Whisper Lakes HOA failed to record the Proposed Revived Declaration documents within the required 30-day period. The undersigned disagrees.

112. Section 720.407(2) provides:

No later than 30 days after receiving approval from the division, the president and secretary of the association shall execute the revived declaration and other governing documents approved by the department in the name of the association and have the documents recorded with the clerk of the circuit court in the county where the affected parcels are located.

113. The greater weight of the evidence showed that Whisper Lakes HOA received the approval from the Department of Commerce on October 30, 2024. The greater weight of the evidence also showed that Whisper Lakes HOA filed the Proposed Revived Declaration documents in the public records of Orange County, Florida, on November 19, 2024. In other words, the Proposed Revived Declaration documents were timely filed within the requisite 30 days—i.e., within 20 days after Whisper Lakes HOA received the approval. This is consistent with section 720.407(2).

Eighteenth alleged violation – section 720.407(4)

114. Ms. Aguilar asserts that the Proposed Revived Declaration violates section 720.407(4) because Whisper Lakes HOA failed to send complete copies of the Proposed Revived Declaration to all parcel owners. The undersigned agrees.

115. Section 720.407(4) provides in relevant part: “Immediately after recording the documents, a complete copy of all of the approved recorded

documents must be mailed or hand delivered to the owner of each affected parcel.”

116. The greater weight of the evidence showed that Whisper Lakes HOA sent a three-page letter and certificate to all of the members of Whisper Lakes HOA on November 19, 2024. However, the greater weight of the evidence failed to show that Whisper Lakes HOA sent a complete copy of all of the approved recorded documents by mail or hand delivery to each of the affected parcel owners of Whisper Lakes HOA. At the very least, Ms. Aguilar did not receive a complete copy of all of the approved recorded documents from Whisper Lakes HOA; she only received the three-page letter and certificate. Thus, Whisper Lakes HOA’s failure to send a complete copy of all of the approved recorded documents by mail or hand delivery to each of the affected parcel owners of Whisper Lakes HOA violates section 720.407(4).

Nineteenth alleged violation – section 720.407(4)

117. Lastly, Ms. Aguilar asserts that the Proposed Revived Declaration violates section 720.407(4) because the retroactive implementation of the Proposed Revived Declaration is unlawful. The undersigned disagrees.

118. Section 720.407(4) provides in relevant part:

The revived declaration and other governing documents shall be effective upon recordation in the public records with respect to each affected parcel subject thereto, regardless of whether the particular parcel owner approved the revived declaration. Upon recordation, the revived declaration shall replace and supersede the previous declaration with respect to all affected parcels then governed by the previous declaration and shall have the same record priority as the superseded previous declaration. With respect to any affected parcels that had ceased to be governed by the previous declaration as of the recording date, the revived declaration may not have retroactive effect with respect to the parcel and shall take priority with respect to the parcel as of the recording date.

119. The greater weight of the evidence showed that Ms. Aguilar’s parcel of property was subject to Whisper Lakes HOA’s restrictive covenants as outlined in the Declaration, the First Amendment to Declaration, and the Second Amendment to Declaration before those restrictive covenants expired on or about July 29, 2018. As such, because Ms. Aguilar’s parcel was governed by Whisper Lakes HOA’s restrictive covenants at the time those restrictive covenants expired, the Proposed Revived Declaration—if approved by a final order—would apply to her parcel. This is consistent with section 720.407(4).

120. The no “retroactive effect” language contained in section 720.407(4) does not exempt Ms. Aguilar’s parcel of property from the Proposed Revived Declaration. It simply means that Whisper Lakes HOA’s restrictive covenants may not retroactively apply to Ms. Aguilar’s parcel between the date Whisper Lakes HOA’s restrictive covenants expired and the date the Proposed Revived Declaration—if approved by a final order—revitalizes the restrictive covenants. *See* § 720.407(4), Fla. Stat. (“With respect to any affected parcels that had ceased to be governed by the previous declaration as of the recording date, *the revived declaration may not have retroactive effect with respect to the parcel and shall take priority with respect to the parcel as of the recording date.*” (emphasis added)).

121. To the extent Ms. Aguilar is seeking to challenge the validity of any assessments or fees against her parcel pursuant to section 720.407(4), such a challenge is not cognizable in this proceeding. The scope of this proceeding is limited to determining whether the Proposed Revived Declaration complies with the statutory requirements for revitalization—not whether any assessments or fees against her parcel have some sort of independent defect. *See generally* §§ 720.403-.407, Fla. Stat.

Conclusion

122. The third, thirteenth, sixteenth, and eighteenth alleged violations were proven. None of the other alleged violations were proven.

123. The Proposed Revived Declaration complied with most of the statutory requirements for revitalization under sections 720.403 to 720.407. Nevertheless, any one of the proven violations—aside from the eighteenth violation¹⁷ pertaining to the delivery requirement of section 720.407(4)—is legally sufficient to require the disapproval of the Proposed Revived Declaration. *See, e.g., Villas Social Club, Inc. v. Dep’t of Econ. Opp.*, Case No. 17-5576, 2018 WL 3131859, at *8 (Fla. DOAH Mar. 23, 2018; Fla. DEO June 21, 2018) (“To excuse [the HOA’s] actions in this case, in failing to submit all of the required documents in the revitalization package and DEO package and not including all of the required information, would amount to an [unlawful] administrative waiver of the statutory requirements.”); *Erich Nikorowicz v. Antiquers Aerodrome, Inc.*, Case Nos. 15-7236, 15-7237, 2017 WL 838507, at *9 (Fla. DOAH Feb. 24, 2017; Fla. DEO May 25, 2017) (similar). The undersigned rejects the argument of Whisper Lakes HOA that “substantial compliance” with the statutory requirements for revitalization is all that is necessary for approval. The case law cited by Whisper Lakes HOA—*Villas Social Club*—clearly and correctly stands for the opposite proposition.

124. The Proposed Revived Declaration is not entitled to approval for revitalization because of any one of the third, thirteenth, and sixteenth alleged violations that were proven.

¹⁷ Because the eighteenth violation pertaining to the delivery requirement of section 720.407(4) occurred after the Proposed Revived Declaration was recorded, it is not legally sufficient in and of itself to require disapproval of the Proposed Revived Declaration. *Compare* § 720.407(4), Fla. Stat. (“The revived declaration and other governing documents shall be effective upon recordation in the public records with respect to each affected parcel subject thereto, regardless of whether the particular parcel owner approved the revived declaration.”), *with* 720.407(4), Fla. Stat. (“Immediately after recording the documents, a complete copy of all of the approved recorded documents must be mailed or hand delivered to the owner of each affected parcel.”). To be sure, the delivery requirement of section 720.407(4) is important, as the delivery of the recorded documents—including a letter of approval from the Department of Commerce that contains all of the elements required by section 120.569(1)—is intended to provide both notice and a point of entry to challenge an approval under rule 28-106.111. *See* § 720.407(3), Fla. Stat. (“The recorded documents shall include ... the letter of approval by the department ...”).

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Department of Commerce enter a final order determining that Ms. Aguilar's Initial Petition was timely filed and disapproving the Proposed Revived Declaration of Covenants and Restrictions for Whisper Lakes Unit 2 Homeowners Association, Inc.

DONE AND ENTERED this 1st day of May, 2025, in Tallahassee, Leon County, Florida.

A handwritten signature in black ink, reading "Joshua E. Pratt".

JOSHUA E. PRATT
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 1st day of May, 2025.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.